IN THE SUPREME COURT OF THE UNITED STATES.

October Term, 1938.

No. 312

JOHN M. TAYLOR, OSCAR A. KENNEDY AND H. RUSSELL HASTINGS, AS THE INDEPENDENT COMMITTEE FOR THE PROTECTION OF THE HOLDERS OF THE PREFERRED STOCK OF DEEP ROCK OIL CORPORATION, *Petitioners,*

vs.

STANDARD GAS AND ELECTRIC COMPANY, REORGANIZATION COMMITTEE OF DEEP ROCK OIL CORPORATION, H. N. GREIS, TRUSTEE OF DEEP ROCK OIL CORPORATION, AND DEEP ROCK OIL CORPORATION, *Respondents.*

RESPONSE OF H. N. GREIS, TRUSTEE, TO PETITION FOR WRIT OF *CERTIORARI.*

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Section 77-B of the Bankruptcy Act was enacted for the purpose of saving from bankruptcy financially distressed corporations and in order to accomplish this the section wisely eliminates the *nuisance value* of small minority stockholders. The question is whether or not the District Court was justified in approving a compromise of the Standard's claim, which amounted to $9,342,642.37 on March 1, 1933, plus interest down to now (September 1, 1938), at

the Illinois rate of five per cent amounting to $2,569,226.66. The fact that Circuit Judge BRATTON dissented is concrete evidence of the wisdom of a compromise of the Standard's claim. It is inferable from Circuit Judge PHILLIPS' opinion, speaking for the majority of the Court of Appeals, that he did not believe the instrumentality rule applied, and that the Standard's claim could not be ignored in its entirety. Circuit Judge WILLIAMS sustained the discretion of the trial judge in approving the compromise.

This case has been in court for over five and one-half years and there ought to be an end to this litigation. An examination of the majority opinion written by Circuit Judge PHILLIPS shows he accurately summarizes the record and history of the relationship between Deep Rock and Standard.

Section 77-B was intended to aid business in recovery and the court administering Section 77-B should not stand on mere legal technicalities but on its judgment with a view to protecting the interests of creditors and stockholders.

Trustee's Objections to Standard's Claim.

The objections of the Equity Receivers, and of the Trustee subsequently appointed under Section 77-B, to the allowance of Standard's claim against Deep Rock were based upon the following propositions:

(1) That Deep Rock was a mere department or instrumentality of Standard and the claim was therefore not approvable in any amount.

(2) That if Deep Rock was not a mere department or instrumentality of Standard, a large portion of the claim consisted of fraudulent, illegal, and unconscionable charges that should in any event be disallowed.

Compromise of Standard's Claim.

The Trustee and his counsel refused to discuss compromise of the Standard's claim until all the evidence had been introduced before the Special Master (R. Vol. 2, p. 398) and after the conclusion of the evidence (the taking of which covered a period of two years and eight months) and after the District Court had declined to approve a compromise of the claim as first proposed, the District Court approved a plan of reorganization of Deep Rock based upon a compromise of the claim whereby all charges attacked by the Trustee as fraudulent, illegal and unconscionable were eliminated and the balance of the claim amounting to approximately $5,000,000.00 subordinated to the rights of all other creditors by acceptance by Standard of common stock in a reorganized corporation. Standard also agreed to cause the entire issued and outstanding stock of the Refining Company to be transferred and the Cracking Plant to be conveyed to the Trustee or Deep Rock Oil Corporation, and to surrender the Refining Company's note for $1,894,592.11 held by it and all other claims of Standard against the Refining Company.

The Trustee and his counsel were and are of the opinion that the compromise of the claim as approved by the District Court, and affirmed by the United States Circuit Court of Appeals for the Tenth Circuit, is for the best interest of the creditors and preferred stockholders of the debtor corporation and therefore recommended the approval of the compromise.

This recommendation was prompted by the uncertainty of the applicability of the instrumentality rule to the Standard's claim. On this question the following facts are important:

(1) The assets of the Deep Rock and the Stand have never been commingled.

(2) The Deep Rock was not organized by Stand and has maintained a form of separate corporate ent kept its own books and records.

(3) The Standard is not an oil company, never own any oil properties or any other physical properties exc office furniture, books, records and intangibles.

(4) The Standard and the Deep Rock are not engag in the same kind of business and never have been.

(5) The Deep Rock is not a wholly owned subsidia of the Standard. There are 50,000 shares of $100.00 p value Deep Rock preferred stock, all of which is outstan ing in the hands of the public with the exception of 9 shares owned by Standard.

Petitioners' counsel admitted in their brief in the Cou of Appeals, page 267, that if the assets of the Refining Co pany belong to the Deep Rock, outright or through the ow ership of the 9,000 shares of the Refining Company stoc then "it would be necessary to reverse the credits that ap pear in the Standard account (Item 31) in the amount o $649,999.00 (I. 62) and (Item 55) in the amount of $1 894,592.11 (I. 63)." (R. Vol. 1, pp. 62-63.) That total $2,544,591.11.

The Trustee, in his amended objections to the Stand ard's claim (R. Vol. 1, pp. 108-121), avers that both of the Refining Company leases, the one of October 1, 1925, and the one of December 20, 1930, should be adjudged fraudu lent, and as such, null and void, which is in effect an action in equity to cancel said leases as fraudulent. Although said leases were fraudulent and forced on the Deep Rock by the majority controlling stockholder, nevertheless the Standard

would be entitled to its money back without regard to the instrumentality rule.

As said by the United States Supreme Court in *Southern Pacific Company* v. *Bogert*, 250 U. S. 483, 63 L. ed. 1099, "The minority stockholders who seek equity should do equity; and a court of chancery has power in granting relief to prevent unjust *enrichment* of the *minority* stockholders at the expense of the *majority* stockholder."

Suppose we wipe out the Standard's claim in its entirety; nevertheless, upon cancelling the leases Standard is entitled to a judgment for $2,544,591.11 with interest at the Illinois rate of five per cent per annum from October 1, 1925. The interest on that sum at five per cent per annum up to February 3, 1937, is $1,442,532.15, making a total of $3,987,123.26. Another year's interest up to February 3, 1938, will run the total up to $4,114,352.82, and to September 1, 1938, to $4,187,727.84. If that amount is allowed the Standard on a parity with other creditors, it would seriously jeopardize the rights of the $10,000,000.00 note holders and render almost valueless the Deep Rock's preferred stock.

It was and is our opinion that it is wise to eliminate the hazard overhanging the creditors by settling the Standard's claim by the issuance of common stock and thus removing Standard from the status of a claimant and substituting the position of stockholder.

If this litigation is kept going creditors may demand a liquidation and that will spell ruin for all stockholders.

It is respectfully submitted that the writ should be denied.

GEO. S. RAMSEY,
Counsel for Trustee.

VILLARD MARTIN,
GARRETT LOGAN,
Of Counsel.